Food and Agriculture Organization of the United Nations

Assessing the governance of tenure for improving forests and livelihoods

A tool to support the implementation of the Voluntary Guidelines on the Responsible Governance of Tenure

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FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
Rome, 2019

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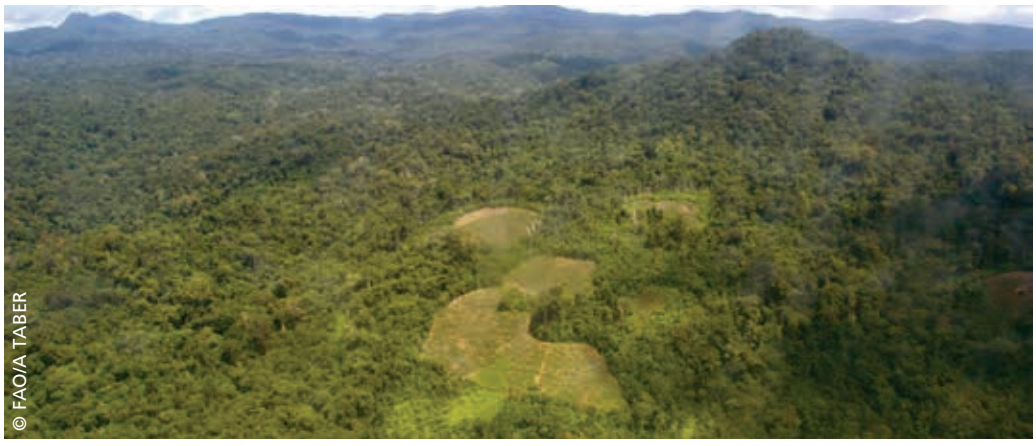
Executive summary

Many countries around the world have parallel tenure systems: **statutory tenure** introduced during the colonial period and then adopted by countries upon independence; and **customary tenure** based on local rules, often originating and evolving from long-standing customary uses of land and resources by local communities. Today, customary tenure remains a major tenure regime globally. Estimates of land area governed under customary tenure systems vary. Global estimates suggest that approximately 65 percent (RRI, 2015) to 50 percent (Tenure Facility, 2019) of the world's land area is governed under customary tenure regimes, with statutory recognition of just 10 percent of such lands (Tenure Facility, 2019). In Africa, customary tenure and governance extends to two thirds of the continent (Alden Wily, 2016). In half of these countries customary tenure extends to over 80 percent of the country's land area. Forests, woodlands, rangelands and wetlands constitute an important part of these customary lands (Alden Wily, 2016). In terms of people, it is estimated that two billion (Alden Wily, 2016; USAID, 2013) to 1.5 billion people (Tenure Facility, 2019) live on and use these lands governed under customary tenure.

Through the adoption of statutory tenure, countries have attempted to replace customary tenure systems. Experience shows that this is rarely effective, as communities find that customary rules are more adapted to local needs than are statutory arrangements. Undermining of customary tenure has resulted in loss of rights of local communities, increase in poverty among the already marginal populations, tenure insecurity for rural communities and others, and conflict due to overlapping and unclear tenure arrangements. It has also led to problems in governance where government administrative capacities are weak. This in turn has provided the conditions for rapid deforestation and forest degradation.



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Recognizing these problems, governments around the world have over the past several decades attempted to give formal recognition to and strengthen customary tenure. In addition, forestry departments have introduced various types of participatory forestry arrangements recognizing some resource use rights of local communities with the purpose of improving forest governance and reducing poverty.

This assessment tool was developed to better understand the strengths and limitations of such forest tenure reforms. It uses the internationally endorsed Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) as its basis. Although the tool allows for assessing all forms of tenure arrangements, it can be particularly helpful for assessing those that recognize customary tenure in forestry through various participatory forestry initiatives including collaborative forestry arrangements, community forestry, smallholder forestry, and others. The tool also allows for the identification and assessment of customary tenure systems that are not recognized by statutory or formal law.

The tool may be used at any point of time to assess forest tenure and governance for all or specific tenure regimes in a country. It can serve as an important instrument to inform revision of forest policies and laws. It may be used at the start of a new forestry initiative, or in understanding and strengthening existing ones such as collaborative or joint forestry, community forestry, smallholder forestry, REDD+ policies and programmes, and forest-based enterprise development. When the assessment is conducted using a participatory approach involving government and non-government stakeholders, it can help to develop a common vision for strengthening forest tenure and governance in a country.

As experienced in the test countries, the findings and recommendations emerging from the assessments can provide valuable insights on the strengths and limitations of existing tenure arrangements and reforms and help generate ideas for greatly improving their performance with regards to improving forest governance, strengthening local livelihoods, and contributing to a range of Sustainable Development Goals (SDGs).

Acknowledgements

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Acronyms

ADR	Alternative dispute resolution
FAO	Food and Agriculture Organization of the United Nations
LGAF	Land Governance Assessment Framework
NGO	Non-governmental organization
NWFPs	Non-wood forest products
PROFOR	Program on Forests
REDD+	Reducing Emissions from Deforestation and Forest Degradation
SDGs	Sustainable Development Goals
UN	United Nations
USAID	United States Agency for International Development
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

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1 Justification for the forest tenure tool

Over the past four decades, many governments around the world have attempted to diversify forest tenure in recognition of customary tenure rights of local communities to address historic injustices, but also in recognition of the central role these can play in improving forest governance and local livelihoods. Governments have diversified forest tenure through various means that have included recognition of partial to full customary rights of local communities. These may be categorized into various forms of collaborative or joint forestry involving co-management by communities and the State, the relatively autonomous community forestry models, private smallholder forestry, and others.

Implementation of these reforms and their impacts have differed from country to country and from region to region. However, such forest tenure reforms have come with many common challenges. For example, rights devolved have been limited in range and scope compared with the customary uses; rights have been devolved to poor quality forests which require significant investment of time and labour with few benefits; rights devolved have not been adequately protected; little or no support was

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given to communities and smallholders to benefit from the rights; or no effective dispute resolution systems were put in place to address conflicts. This in turn has led to weak forest governance, poverty and insecurity for local communities.

Meanwhile, despite the reforms, 76 percent of the world's forests remain under control of governments by statutory law, where little or no customary forest use is formally recognized (FAO 2015a, 2015b). This continues to pose enormous challenges to good governance of forests as local communities try to meet their livelihood needs and come into direct conflict with State authorities.

The Food and Agriculture Organization of the United Nations (FAO) developed this tool to help countries review and better understand the tenure systems, providing a first important step towards identifying gaps as well as recommendations for strengthening them. This tool uses the Voluntary Guidelines on the Responsible Governance of Tenure to Land, Fisheries, and Forests in the Context of National Food Security (the VGGT) that promote secure tenure rights and equitable access to all forms of tenure (see Box 1). As the first comprehensive international instrument on tenure, the VGGT provide a sound basis for such an assessment. The VGGT emerged out of a highly inclusive process of consultations involving representation from around the world of government institutions, civil society, the private sector, academia and United Nations (UN) agencies. This tool is also informed by existing guidance for assessing land and forest governance.[1]

The tool contributes to the SDGs, in particular to Target 1.4 (By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance), and specifically to indicator 1.4.2 (Proportion of total adult population with secure tenure rights to land, with legally recognized documentation and who perceive their rights to land as secure, by sex and by type of tenure).

BOX 1

The Voluntary Guidelines on the Responsible Governance of Tenure

The Voluntary Guidelines on the Responsible Governance of Tenure promote secure tenure rights and equitable access to land, fisheries and forests with respect to all forms of tenure: public, private, communal, indigenous, customary and informal. [2]

[1] Important land and forest governance assessment tools consulted include the PROFOR (Program on Forests), which includes some elements of tenure in an overall assessment of forest governance (https://www.profor.info/sites/profor.info/files/ForestGovernanceFramework_0.pdf); the USAID land tenure and property rights set of tools (https://www.land-links.org/2013/10/new-assessment-tools-intervention-matrices-for-land-rights/); the World Bank Land Governance Assessment Framework (LGAF) (http://siteresources.worldbank.org/INTLGA/Resources/LGAF_Manual_Oct_2013.pdf); and the FAO Legislation Assessment Tool for Responsible Governance of Forests , used in Sierra Leone (http://www.fao.org/3/a-i5195e.pdf).

[2] The VGGT are available online (http://www.fao.org/docrep/016/i2801e/i2801e.pdf).

2 Objectives of the tool

This tool is intended to help countries evaluate their forest tenure systems, particularly those that facilitate participation of non-state actors in forestry, including co-management regimes, community forestry, smallholder forestry, large holder forestry, or company concessions granted on State lands. Forest tenure review may be conducted in the context of policy or legal reform, to inform Reducing Emissions from Deforestation and Forest Degradation (REDD+) policy formulation, to improve understanding of a specific tenure system that is under-performing, or to strengthen performance of the various participatory forestry arrangements in country. For further analysis of institutional arrangements, and impacts on forest governance and local livelihoods, FAO has developed a complementary Community-Based Forestry Assessment Framework that countries may use.[3] The two assessments when used together can provide a very comprehensive understanding of tenure and governance related drivers of deforestation and forest degradation, and ways to address them.

[3] FAO. 2019. A framework to assess the extent and effectiveness of community-based forestry. Rome, Food and Agriculture Organization of the United Nations.

This tool, following the VGGT, focuses on five general principles of good governance of tenure: i) recognize and respect all legitimate rights (see Box 1); ii) safeguard these rights against threats and infringements; iii) facilitate enjoyment of rights so that right holders may derive benefit from them; iv) provide access to justice in case the rights are violated or infringed upon; and v) prevent disputes, violent conflict, and corruption. Weak implementation of any one of these principles can result in insecurity for the beneficiaries, and hence lack of incentive to invest in the forests. Overall, the tool seeks to assist users in answering questions presented in Box 3 below regarding the forest tenure context in a particular country, with respect to the VGGT.

BOX 2
Legitimate rights

The VGGT give recognition to legitimate rights – both those that are **legally legitimate** (i.e. legally recognized) and others that are **socially legitimate** (i.e. they have broad social acceptance even without legal recognition), such as customary rights on State land. The VGGT are based on the recognition that "…inadequate and insecure tenure rights increase vulnerability, hunger and poverty, and can lead to conflict and environmental degradation when competing users fight for control of these resources".

BOX 3
Overarching questions guiding the framework

- What are the prevailing (major) legitimate tenure systems in the country's forest sector?
- For tenure systems that are legally recognized, how does the policy and legal framework compare with guidance provided in the VGGT? Does the policy and legal framework provide adequate recognition of the bundle of rights within the various forest tenure systems in the country? Does it provide strong protection for these rights, especially in light of large-scale investments and markets (e.g. forest concessions) and readjustments in tenure due to climate change or other factors?
- What are the institutional arrangements for governance of forests for the various tenure types? Are they adequately implementing the relevant policies/laws?
- How are forest tenure/rights administered with regard to records of tenure rights, valuation, taxation, spatial planning, etc.?
- Do right holders have access to justice for resolving tenure-related disputes? Are formal dispute-resolution systems accessible and affordable for the majority of right holders? Are there alternative dispute resolution systems in place? Are these accessible to women, men, and the various marginalized groups?
- Are the tenure systems governed with adequate consideration to prevention of disputes/conflicts? Do they operate with adequate transparency and fairness? Do they include mechanisms to eliminate or reduce corruption?
- How might governance of tenure be strengthened across the various types of forest tenure systems in light of the best practice guidance provided in the VGGT?

3 Methodology for using the tool

Because the tool is intended to help identify areas that require improvement in governance of tenure, and especially of tenure arrangements involving the participation of non-state actors in forestry, it is anticipated that national governments via their agencies will initiate the assessment using a collaborative and inclusive process involving all key government and non-governmental stakeholders with legitimate rights to use and manage forest land and resources, whether legally recognized or not. Where governments have not recognized this need, other stakeholders such as non-governmental organizations (NGOs), civil society organizations, community groups or the private sector may use the tool to assess all or specific forest tenure systems. However, participation of relevant government entities is recommended at a certain stage given the important role they play in formulating and implementing policy, legal and organizational frameworks.

Each country's needs for a forest tenure assessment will likely be different, and the scope of tenure assessments will vary. Where legal/policy reform is ongoing or REDD+ policies and measures are being designed, assessment of the various major tenure systems will be needed. In other countries, where a specific tenure system is experiencing weak performance, only that tenure regime may be assessed. Regardless, use of the full assessment is recommended, given the importance of the five general principles to strengthening governance of tenure.

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Countries may take different approaches to using the tool. Following the VGGT emphasis on inclusion and participation of all stakeholders, the following process is recommended:

- **Identify a national consultant** – As a first step, a national consultant should be identified to lead the assessment. Ideally, the consultant will have previous experience working with State and non-state stakeholders such as local communities or smallholders in the forestry sector. The consultant should liaise with the Ministry or Department of Forestry, other relevant government entities, and other stakeholders for initiating and carrying out the assessment.
- **Review of the VGGT** – Since this tool uses the VGGT as its reference, it is critical that the national consultant conduct a careful review of the document, including both the general and implementing principles provided therein. It is also recommended that the consultant take the online course on the VGGT to understand the principles fully.[4]
- **Define scope of assessment** – The national consultant should work with government and non-government stakeholders to define the scope of this assessment, in particular the specific tenure types that the stakeholders would like to have assessed. The tool provides for separate analysis of major tenure types, in recognition of the fact that the nature of tenure rights and the strength of tenure will likely vary with the tenure system.
- **Desk review** – The national consultant should review existing policy/legal framework on tenure rights, institutional arrangements and tenure administration, responding to the indicators in the tool. For each tenure system being assessed, the consultant would need to conduct secondary research on the level of implementation and performance with regards to impact on livelihoods and on forest management. The tool includes a set of tables, indicator questions, and a methodology for rating the indicators. The national consultant should complete the assessment and include ratings based on his or her judgement, providing rationale for the ratings provided. Additional guidance is provided later in this document
- **Introductory workshop** – The national consultant, in agreement with the government, will normally hold an introductory workshop involving relevant government institutions; key informants; experts from academia; research organizations; and representatives of local community members, relevant NGOs, civil society groups, forest users, private sector operators and others. The workshop would serve to inform participants of the assessment, present the process for conducting this assessment, share preliminary findings from the desk review and solicit input on information gaps.
- **Key informant interviews** – To fill in gaps in information and obtain diverse perspectives, the consultant should conduct interviews with a broad set of informants knowledgeable about the forest tenure systems in the country. These individuals may include the stakeholders noted above. Key informant interviews

[4] Please see: http://www.fao.org/elearning/#/elc/en/course/VG1

would be used to validate findings and to fill gaps, particularly with regard to implementation of the policy/legal provisions. Specific themes within the tool may need input from non-forestry specialists, for example information regarding land laws and how they complement or contradict the forest laws. A legal expert may need to be consulted who can speak knowledgeably on formal and informal dispute resolution systems. Interviews with beneficiaries of the tenure reform (local communities, smallholders) will be necessary to obtain first-hand information on the impacts and implications of these reforms. Key informants should therefore be identified for each major section of the tool.

- **Field-level data collection** – Obtaining field-level information from stakeholders can serve to provide important information on successes and challenges in the implementation of the policy/legal framework, functioning of institutions, and implications for stakeholders. This would involve choosing the particular tenure system to assess, selection of pilot sites and conducting focus group discussions with a wide range of stakeholders to obtain different perspectives and experiences with the tenure system being assessed. In the absence of available resources, the assessment may rely on secondary literature (e.g. recent research).
- **Validation workshop** – Information obtained through the above steps should be validated in a national-level forest tenure workshop, also involving the various stakeholders consulted earlier. The workshop would provide the opportunity to further validate findings, and more importantly, to identify recommendations for strengthening governance of tenure. The workshop will also serve to validate the numerical ratings to indicators provided by the consultant to the degree possible. However, since the ratings are general impressions of the situation, and there will be disagreements among participants, the validation should place emphasis on refining the contents of the assessment, rather than focus on obtaining agreement on the ratings. Overall, the validation workshop will be critical for building consensus on the findings and on the priority actions to improve tenure governance.
- **Final report** – Finally, while the tool itself is useful for collection of information, a summary report will be more digestible for the readers, including policy-makers. Thus, the consultant should prepare a final assessment report, an outline for which is provided in the Annex. The summary report will provide an overview of the forestry context and the forest tenure reforms adopted in country in recent decades. The report should include the information collected and an analysis of each of the tenure systems assessed, highlighting the differences and similarities among them.

While the length of time needed to carry out the assessment will depend upon the scope of the assessment, it is anticipated that, on average, a full assessment may require a period of four weeks (excluding field-level data collection), with work carried out over a three-to-six-month period depending upon when the workshops can be held. If planned, field-level data collection will require additional time depending upon the tenure types assessed and numbers of sites selected.

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4 The tenure guidelines and provisions

The VGGT are intended to "…provide guidance for improving the policy, legal and organizational frameworks that regulate tenure rights; for enhancing the transparency and administration of tenure systems; and for strengthening the capacities and operations of public bodies, private sector enterprises, civil society organizations and people concerned with tenure and its governance. The guidelines place the governance of tenure within the context of national food security and are intended to contribute to the progressive realization of the right to adequate food, poverty eradication, environmental protection and sustainable social and economic development" (FAO, 2012). Box 4 provides the general as well as implementing principles of the VGGT for responsible governance of land, fisheries and forests.

While all forms of existing tenure systems play an important role in the context of the specific country, the VGGT place special emphasis on customary and informal tenure systems and smallholders when compared with State or large private holders of land and forests. This is in part due to the focus on food security, and in part to the historic marginalization of local communities and smallholders. Nevertheless, it is important to keep in mind that the VGGT principles apply to all legitimate tenure systems regardless of this emphasis.

Finally, prior to beginning on a review of the specific provisions in the VGGT, there is a need to establish a common understanding of the use of the terms and concepts in the VGGT, both to provide clarity on the use of the terms, and to place the right emphasis on these terms. In particular, the following terms require clarification:

- **Tenure systems** – The VGGT define tenure systems as those that determine who can use which resources, for how long, and under what conditions. The VGGT specify that systems may be based on written policies and laws, as well as on unwritten customs and practices (page iv).
- **Tenure security** – Improving tenure security of right holders is central to the VGGT. The VGGT encourage States to improve security of tenure rights through various measures, such as the recording of individual and collective tenure rights (see VGGT provisions 17.1, 11.5). The VGGT note that States should guarantee legal protection against forced evictions, and any arbitrary extinguishing or infringement of legitimate rights (4.4, 4.5). Given that legitimate tenure rights also include use and other secondary rights, the VGGT encourage States to avoid extinguishing or infringing on such rights (7.1).
- **Legitimate tenure rights** – This is a key concept found throughout the VGGT. The VGGT do not provide a concrete definition of legitimate tenure rights due to contextual differences from country to country. Instead, the Guidelines suggest that States arrive at their own non-discriminatory definitions of legitimate tenure rights after a careful review of all existing tenure governance systems operating in their country (3.1.1, 4.4).

  However, as noted earlier, the VGGT recognize that both statutory and customary, formal and informal tenure rights constitute as legitimate, and encourage States to acknowledge, document and respect all legitimate tenure rights in national policy, law and practice. In particular, the VGGT suggest that legitimate tenure rights include customary and indigenous rights on State land, tenure rights over common property resources (e.g. rangelands, fishing grounds, traditional forests) (22.2), subsidiary tenure rights such as gathering rights (including rights to water and mineral resources) (7.1, 12.9, page iv), seasonal and otherwise temporary rights of access and use (8.3, 9.4, 20.3), and overlapping and shared rights (20.3). The VGGT explicitly consider as "legitimate" not only those tenure rights formally recognized by national law, but also rights that are considered socially legitimate in a country or regional context but not legally recognized (4.4, 5.3). When conducting the assessment, the term "legitimate" should therefore be viewed in

this broad context of legal and social legitimacy, and particularly incorporate an assessment of legitimate subsidiary rights including legitimate rights to use, manage and control forest land, associated resources, or both (1.2.1). In the forestry context, subsidiary rights can include legitimate right to harvest/benefit from timber and various non-wood forest resources such as fuelwood, fodder (or access to pasture), medicinal plants, edible plants and fruits, water, fish, wildlife and carbon. Finally, the VGGT state that governments should clearly recognize that customary and indigenous tenure rights, whether recorded or not, are equal in validity and weight to any rights that have been granted by state agencies (3.1.1, 4.4, 5.3, 7.1). The VGGT further suggest that whenever States give legal recognition to informal tenure, this should be done through participatory and gender-sensitive processes, and with particular attention to vulnerable populations (10.3).

- **Procedural rights** – Procedural rights, such as the right to obtain information, participate in policy/legal reform or decision-making (see Implementing principles in Box 4, and VGGT provision 4.10), or file complaints should not be viewed as less important than substantive rights (e.g. right to own or access a resource). Procedural rights are important as they allow right holders to claim, use and benefit from their substantive rights. In the context of customary tenure systems that are inherently diverse and flexible compared with legally recognized tenure systems, the need for procedural rights is critical to allow space for communities to maintain and establish their own approaches to govern land and resources according to customary rules.

- **Enjoyment of rights** – While the VGGT give particular importance to the recognition and protection of legitimate tenure rights, States are encouraged to facilitate the enjoyment of (or to benefit from) these rights (3.1.3, 6.3). This may entail awareness raising on rights; and removal of unnecessary legal and procedural barriers for enjoyment of rights (11.3). In the forestry context, the latter may include complex administrative procedures for obtaining legal recognition of rights, the need for numerous permits for resource use once rights are recognized, complex processes for obtaining permits, and fees associated with rights allocation/registration. States are also encouraged to provide support to all right holders (15.8). This may be through technical advice, access to loans and credits, seedlings, support for control of fire and pests, insurance, facilitating participation of the poor in markets by publicizing market information (11.3), or promoting production and investment models that encourage partnerships with local tenure right holders (12.6).
- **Gender equality** – The VGGT call for gender-sensitive policies/laws (7.4, 7.1). They also call for gender-sensitive processes and procedures in the recognition of rights (e.g. equal inheritance rights, rights to marital property in traditional/unregistered marriages, rights to land/forests in polygamous relationships, rights of widows), protection of rights, or transfer of rights (e.g. spousal consent). It is widely known that gender-neutral laws on land or forest tenure, for example, are not adequate in preventing gender-biased outcomes. This is mainly due to gender-differentiated norms, roles and responsibilities, and social relations. For instance, while statutory law may give women equal inheritance rights as daughters, and equal rights to marital property as wives, in practice, custom may disregard these legal rights, recognizing only sons as heirs of property, and only husbands as owners of property acquired by couples. Women's rights are also affected when the household breaks down, for example in the event of male migration and prevalence of women-headed households, war, abandonment, divorce, polygamous relationships, illness (e.g. HIV/AIDS), or death.

  Meanwhile, public information such as legal information may not reach women due to their absence from public spaces, or limited levels of literacy. In such instances, women may lose their access to land and forests, despite their investment in them. As with statutory laws, projects may not overtly discriminate against women; however, gender-blind projects can inadvertently marginalize women beyond the current level. Gender sensitivity, therefore, requires specific effort to ensure that both men and women benefit from rights recognition, protection, or from the implementation of various tenure reforms. Gender sensitivity can include specific efforts to understand gender-differentiated roles and uses of forests, make legal information available in ways and in places that are accessible to women, and record rights of both the male and female holders of tenure rights.

- **Vulnerable and marginalized people and groups** – As with women, the VGGT place emphasis on various vulnerable and traditionally marginalized groups as needing specific attention. These include the poor, peasants, the landless, residents of informal settlements, indigenous peoples, fishers, pastoralists and rural workers, small-scale users and producers, those who hold subsidiary tenure rights (such as gathering rights), youth, widows and orphans (4.8, 7.1, 15.5, 25.6); and any others with limited access to administrative and judicial services (6.6). The VGGT seek to identify specific strategies and approaches to ensure that the services reach the most marginalized.
- **Institutions** – The VGGT refer to "responsible", "implementing", or other institutions in many of the provisions. Depending upon the context, this may mean implementing government agencies such as the forest department or its decentralized offices, dispute resolution bodies including the judiciary, local administration, organizations of forest users (e.g. indigenous peoples, pastoralists, others), the private sector, academia and other stakeholders concerned with tenure governance. The VGGT seek to promote cooperation among these actors (1.2.4).
- **Consistency with other existing obligations** – The VGGT note that States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments (2.2). For example, in the case of indigenous peoples, the VGGT call on States to meet their relevant obligations and voluntary commitments to protect, promote and implement human rights, including, as appropriate, the International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, the Convention on Biological Diversity, and the United Nations Declaration on the Rights of Indigenous Peoples (9.3). This assessment should, therefore, take into consideration these key relevant national and international laws, particularly in relation to human rights considerations.

BOX 4

The core principles
of The Voluntary Guidelines on the Responsible Governance of Tenure

A. General principles

States should:

- **Recognize and respect all legitimate tenure right holders and their rights** – take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.
- **Protect tenure rights** – safeguard legitimate tenure rights against threats and infringements and protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.
- **Promote and facilitate the enjoyment of legitimate tenure rights** – take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.
- **Provide access to justice to deal with infringements of legitimate tenure rights** – provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; to provide affordable and prompt enforcement of outcomes; and to provide prompt, just compensation where tenure rights are taken for public purposes.
- **Take active measures to prevent tenure disputes from arising and escalating into violent conflicts** – endeavour to prevent corruption at all levels.

Non-state actors, including business enterprises, have a responsibility to:

- **Avoid infringing on the human rights and legitimate tenure rights of others.**
- **Provide risk-management systems** to prevent and address adverse impacts on human rights and legitimate tenure rights.
- **Address and correct any adverse impacts on rights** – provide for and cooperate in non-judicial mechanisms to provide remedy, including effective grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights.
- **Identify and assess any actual or potential impacts on human rights and legitimate tenure rights** in which they may be involved.

B. Implementing principles

- **Human dignity** – Recognize the inherent dignity and the equal and inalienable human rights of all.
- **Non-discrimination** – Prevent discrimination under law/policies and in practice.
- **Equity and justice** – Recognize that equality between individuals may require acknowledging differences between individuals and taking positive action, including empowerment, to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.
- **Gender equality** – Ensure equal rights of women and men to enjoyment of all human rights, while acknowledging differences between them and taking specific measures aimed at accelerating equality. Ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.
- **Holistic and sustainable approach** – Recognize that natural resources and their uses are interconnected and adopt an integrated and sustainable approach to their administration.
- **Consultation and participation** – Engage with and seek the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; take into consideration existing power imbalances between parties and ensure active, free, effective, meaningful and informed participation of all in associated decision-making processes.
- **Rule of law** – Adopt a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with existing obligations under national and international law, and with due regard to voluntary commitments under regional and international instruments.
- **Transparency** – Clearly define and widely publicize policies, laws and procedures in applicable languages, and widely publicize decisions in applicable languages and in formats accessible to all.
- **Accountability** – Hold individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.
- **Continuous improvement** – Improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programmes and secure on-going improvements.

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5 The tool for assessing forest tenure

5.1 GENERAL INSTRUCTIONS

As mentioned previously, this tool uses **VGGT as the basis,** mainly for two reasons: i) these are the most comprehensive global guidelines available on strengthening governance of tenure; and ii) they have been internationally endorsed through extensive consultations with government and non-governmental stakeholders. Overall, the VGGT emerged in response to extensive "land and resource grabbing" that had been taking place and continues globally, and hence place specific emphasis on protection of rights of customary and informal right holders, and particularly vulnerable and marginalized groups around the world.

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This tool focuses the assessment on **legally recognized tenure systems**, including customary lands/forests if recognized in statutory law. The framework does not provide for detailed analysis of socially legitimate rights not recognized by statutory law. The tool also provides for separate analysis of the key legally recognized tenure system operating in a country. More commonly, these include forms of co-management arrangements in and around protected areas or reserves, community forestry on State or community lands, or smallholder private forestry. State-controlled tenure systems are excluded from this assessment as the State is assumed to have secure tenure. Finally, because not all tenure systems function effectively, separate analysis will allow for deeper understanding of successes and challenges associated with each tenure system and highlight differences between them. Foresters working on this assessment, lacking formal training on tenure concerns, have found it helpful to consider themselves as "beneficiaries" or "rights holders" of these various tenure systems to assess whether the tenure system provides the enabling environment for effective participation.

The core of the tool includes **three sections of analysis:** the "policy/legal framework" focuses on what is provided for in the policies and laws; "Institutions" focuses on the institutional set-up for implementation of the tenure system as provided in the law and in practice; and "Administration of tenure" focuses mainly on documenting, recording and registering of rights. This may include provisions in the legal framework, but, more importantly, information on how these systems function in practice.

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The VGGT give particular attention to **vulnerable/marginalized groups**, thus the tool provides for space to identify such groups early on within the local context. The forest tenure tool provides some indicative categories in the definitions of terms. It will be important to know how such groups are affected by the various forest tenure regimes, and if these groups are able to benefit from them.

A common problem experienced in past assessments has been the lack of specificity in the information provided. Thus, it will be important to note not whether the law provides protection or not (for example), but what specific provisions are there in support of the indicator/question, and if the provisions are adequate.

The tool includes **numeric ratings** in the tables. These ratings are indicative and included here to provide a snapshot of the situation. These will necessarily be subjective, but the justification should provide information to back these ratings.

5.2 THE TOOL

The full tool includes a series of tables. The first two tables apply to **socially legitimate forest tenure systems** that are not recognized by statutory law. Table 1 focuses on the extent of these, and Table 2 on the security of tenure in light of large-scale investments, and any other readjustments of tenure to forest land and resources. Table 6 provides for summarizing the key strengths, concerns, and recommendations for such tenure systems. All other tables apply to **legally legitimate forest tenure systems** that are recognized by statutory law. Thus, Table 3 focuses on the extent of these tenure systems, Table 4 on the specific rights associated with these tenure systems, Table 5 assesses the strength of rights and other tenure criteria, and Tables 7-9 provide for summarizing these tenure systems with respect to numerical rating, recommendations and priority setting. The tool provides further guidance on each table before presenting the table itself.

5.2.1 Socially legitimate forest tenure systems

The tool begins with Table 1 which provides for the identification of socially legitimate forest tenure systems not recognized by statutory law. In the forestry context, these may include customary forest uses on State land including harvesting of various wood and non-wood forest resources such as fuelwood, fodder, edible plants and fruits, medicinal plants, water, fish and wildlife. They may include sacred forests. Please note that this Table does not deal with socially legitimate (including customary rights) that are recognized by formal law. Those should be analysed in Table 3.

TABLE 1
Socially legitimate tenure systems not recognized by statutory law

Local name of tenure type	Type of use, geographic region, associated with which users	Extent		Overlapping tenure system (if any)
		Area (ha)	% of total forest land	
1.				
2.				
3.				
4.				

The indicators in Table 2 assess the status of the above tenure systems with respect to the VGGT (the specific VGGT provisions are provided in parentheses following each indicator). The indicators should be completed once for all socially legitimate tenure systems. Significant differences in responses may be noted under the comments. In particular, reviewers should assess how these tenure systems are or are not acknowledged in the event that new rights are allocated to these forests, and particularly when the State chooses to promote investments (e.g. logging, mining, biofuels concessions, etc.) or tenure readjustments (e.g. establishment/designation of protected areas and reserves). In the forestry context, specific attention should also be given to State investments in reforestation/afforestation activities to ensure that they do not result in the elimination of any legitimate rights, particularly of women and marginalized groups.

The VGGT call upon States to ensure that such initiatives do not compromise food security, and instead reduce vulnerability, promote broad and equitable access to forest land and resources, and facilitate inclusive rural development. The State should ensure that those affected are at least as well off following the implementation of tenure reforms compared with before. The VGGT call on States to ensure responsible investments that do no harm, safeguard against dispossession of legitimate tenure right holders (formally recognized or not), and respect human rights.

Reviewers are asked to rate the indicators on a scale of 0–5 reflecting the "level of alignment" with respect to the VGGT. Thus, 0 = no alignment, 1= very weak alignment, 2 = weak alignment, 3 = some alignment, 4 = strong alignment, and 5 = very strong alignment. These figures, although subjective, are intended to provide a snapshot of areas where there is strong versus weak alignment with respect to the VGGT. Column 4, "Comments", allows users to justify the numeric rating. Under the "overall assessment", reviewers can provide the average rating and overall/summary of comments.

TABLE 2
Status of socially legitimate tenure systems not recognized by statutory law

	Indicator	Rating (0–5)	Comments
1.	**Recognition of rights**		
	• **Any reference in legal framework.** Even if not legally recognized, are these socially legitimate tenure systems referenced in the constitution or forest policy?		
	• **Identification of rights prior to allocation of forests to others.** In cases of large-scale allocation of rights to forest land and forest resources, all existing tenure claims and right holders are systematically and impartially identified and documented at the outset through consultations with, and participation of, affected parties (12.10).		
	• **Prior independent assessments.** Prior to any large-scale transactions of State forest and forest resource tenure, States support independent assessments of the potential impact on tenure rights, food security, and livelihoods (12.10).		
2.	**Protection of rights**		
	• **Protection of all legitimate forest land and resource rights.** The policy/legal framework protects all legitimate tenure rights, including those on forest land and resources owned or controlled by the State, from being eliminated or changed unilaterally and unfairly. The policy/legal framework protects communities against unauthorized use of their land. Where legal recognition of informal tenure is not possible, laws prevent forced evictions (8.2, 9.8, 10.6, 4.5, 7.1, 8.6, 22.2).		
	• **Fair compensation.** In the case of elimination of original rights, the State provides prompt and fair compensation in the form of money and/or alternative parcels or holdings (15.9, 16.8, 16.2, 16.3, 16.9).		
3.	**Enjoyment of rights**		
	• **Support to local right holders.** The State promotes production and investment models that encourage partnerships with local right holders in place of large-scale transfer of tenure rights to investors. The State supports programmes for affected communities, such as access to credit, inputs, technical assistance and insurance, or other support/extension services to facilitate such integration (12.2, 11.2, 11.3, 11.4, 12.6, 12.4, 15.8, 13.4, 14.4).		

	Indicator	Rating (0–5)	Comments
4.	**Access to justice**		
	• **Mechanism for seeking justice.** The State provides a grievance mechanism to ensure that affected parties can seek corrective action. The State requires investors to provide effective grievance mechanisms to remedy any adverse impacts on legitimate tenure rights. The State provides claimants with assistance, including legal and paralegal aid (12.14, 3A/3.2, 15.9).		
5.	**Prevention of disputes/conflicts**		
	• **Transparency and public participation in rights allocations.** The State promotes transparency when allocating forest rights. Measures are in place to minimize administrative discretion and opportunities for corruption during the allocation of concessions and other forestry rights (12.3, 16.6, 16.2, 16.1, 12.7, 12.9, 12.11, 15.9).		
	• **Consultation and participation.** The State ensures good faith consultation with those whose tenure rights, including subsidiary rights, might be affected before initiating any investment projects (16.2, 12.7, 12.9, 12.11).		
	• **Monitoring.** The State monitors the impacts of large-scale investments and readjustments on access to forests and food security, of both men and women, and introduces corrective measures to ensure that the reforms assist beneficiaries and reduce negative social and environment impacts (15.10, 15.7, 15.6, 11.4, 12.14, 8.11, 3.2).		
Overall assessment/summary of status		**Average rate**	

5.2.2 Legally legitimate forest tenure systems

Legally legitimate forest tenure systems in a country will likely include various tenure arrangements listed in Column 1 of Table 3. This Table allows for the identification of these various tenure systems, their spatial extent, and the policy objective as stated explicitly in law and policy documents or inferred from the implementation of associated programmes.

TABLE 3
Legally legitimate forest tenure systems recognized by statutory law

Forest tenure type	Local name of tenure type	Extent		Policy objectives
		Area (ha)	% of total forest land	
1. Total forest land (ha)				
2. Forest land owned by government				
a. Leased to communities				
b. Leased to smallholders				
c. Leased to large owners[5]				
d. Leased to corporations				
e. Other				
3. Owned by non-state entities				
a. Communities				
b. Smallholders				
c. Large owners				
d. Corporations				
e. Other				

Note: Please note the sources of data for the figures provided

In Table 4, the reviewers are asked to specify the tenure types to be evaluated in this assessment. As mentioned in the General Instructions, the VGGT apply to all tenure types, however, this assessment focuses on tenure systems that entail participation of non-state stakeholders, such as co-management initiatives, smallholder forestry and community forestry. The reviewers are asked to identify the nature of rights associated with each legally recognized tenure system being reviewed. While this table is not necessary to the tool, it is included so that reviewers have a clear understanding of provisions of the tenure system that is being assessed, ensure that there is clarity on

[5] The cut-off point between smallholders and large forest owners will differ from country to country, and region to region. In general, smallholders here refer to families or households rather than corporate entities.

differences between tenure systems being assessed, and to review VGGT provisions such as protection and enjoyment of rights in view of the various types of rights that the tenure system provides. Rows 8–10 in Table 4 are included to facilitate analysis in the main tool presented in the following pages.

Also, rights in the forestry context often tend to be shared and overlapping, with various groups of people accessing a particular forest for different uses and with varied rights arrangements. Thus, when attempting to understand existing tenure arrangements, it is important to take note of the various "strands of rights" that might exist, *vis-à-vis* rights to access (e.g. for grazing livestock), right to withdraw resource (e.g. firewood), right to manage, exclude others, or alienate/transfer rights to others. Furthermore, while the VGGT state that "States have the power to allocate tenure rights in various forms, from limited use to full ownership" (provision 8.8), the Guidelines also note that States should promote and facilitate the enjoyment of legitimate tenure rights, take active measures to promote and facilitate the full realization of tenure rights, or the making of transactions with the rights… (page 3). When viewed in the forestry context therefore,

TABLE 4
Legally recognized tenure system to be assessed, and the rights associated with each

Tenure types to be assessed in this assessment:				
Tenure type 1:				
Tenure type 2:				
Tenure type 3:				
The particularly marginalized and vulnerable users of forests:				
	Type of right	**Nature of rights**		
		Tenure type 1	**Tenure type 2**	**Tenure type 3**
1.	Access			
2.	Use/withdrawal (rights to timber, NWFP; right for subsistence use vs sale)			
3.	Management			
4.	Exclusion			
5.	Alienation rights			
6.	Duration of rights			
7.	Protection against expropriation/ compensation-related provisions			
8.	Responsibilities (e.g. taxes, fees, other profit sharing with State, development of management plans, preparation of inventory)			
9.	Permits required for use of resources (e.g. approval for use or resource, transport permit)			
10.	Support provided by State (e.g. insurance, subsidies, seedlings)			

rights to forests may hold little meaning if the right holders have no right to manage the land or associated trees, or lack exclusive rights (and hence cannot exclude or regulate livestock grazing by adjacent communities, or concessions to logging companies), or if the duration of rights is too short (hence not providing the incentive for long-term investments such as planting and harvesting trees).

Finally, Box 5 provides the framework for assessing tenure systems recognized in statutory law. Row 1 provides for the assessment of policy and legal provisions supporting the tenure system. Row 2 provides for the assessment of institutional arrangements, practices, and effectiveness of implementation. Row 3 provides for the assessment of tenure administration in terms of recording and registration of rights. As Rows 2 and 3 are intended to assess the successes and challenges in implementation, it will be critical to consult forestry officials, NGOs working with community groups, community representatives, and others to obtain first-hand information.

In Box 5, columns A–E represent the "general principles" of the VGGT, *vis-à-vis* recognition of rights, protection of rights, provisions for enjoyment of rights, access to justice and prevention of disputes/conflicts. In this regard, the VGGT are comprehensive and do not simply focus on recognition of legitimate rights. The VGGT acknowledge that rights recognition is meaningless if rights are not protected by the State. Further, even where beneficiaries' rights are recognized and protected, the State should provide support to right holders so that they can benefit from their rights. Likewise, right holders must have access to justice in case their rights are violated/infringed upon by the State or any non-state actor. Finally, active measures should be put in place by the State to prevent disputes by promoting tenure systems and implementation in a way that they do not create conflict and instead serve to alleviate disputes. The absence of any of these principles can result in insecurity for the beneficiaries and others, and hence weak incentive to invest in the forests. Due to the overlapping nature of principles for state and non-state actors, guidance for non-state actors is incorporated as indicators within the framework below.

BOX 5

Framework for legally legitimate forest tenure systems

	Recognition of rights (A)	Protection of rights (B)	Provisions for enjoyment of rights (C)	Access to justice (D)	Prevention of disputes/ conflicts (E)
1. The policy/legal framework	1A	1B	1C	1D	1E
2. Institutions	2A	2B	2C	2D	2E
3. Administration of tenure	3A	3B	3C	3D	3E

Finally, Table 5 lists a set of key indicators for each cell of Box 5. These indicators seek to identify the most important factors for assessing the status of the particular cell. The indicators follow the VGGT, and incorporate the implementing principles of the VGGT, *vis-à-vis* rule of law, equity/justice, transparency and accountability, consultation and participation, and adaption or continuous improvement. It is important to note that each indicator in this tool is unique, and so should the responses be to the indicators. **Again, the figures in parentheses specify the related provision in the VGGT.**

Reviewers are also asked to rate each indicator along a scale of 0–5 reflecting the "level of alignment" with respect to the VGGT. Thus, 0 = no alignment, 1= very weak alignment, 2 = weak alignment, 3 = some alignment, 4 = strong alignment and 5 = very strong alignment. Again, these figures will be subjective, but are intended to provide a snapshot of areas where there is strong versus weak alignment with respect to the VGGT. Column 3 (justification) allows users to justify the numeric rating given in column 2. Users should provide the overall justification followed by specific justification for each tenure type being assessed. Justification should be supported appropriately by legal or policy provision, institutional set-up and associated practice, etc. Finally, column 4 (recommendations) allows reviewers to propose improvements with respect to the good governance principles of the VGGT. As with the justification, users should provide overall recommendation followed by specific recommendation (if any) for each tenure type being assessed. Under the "overall assessment" for each cell, reviewers can provide the average rating for that cell, an overall/summary of justification, as well as key areas of improvement (including those identified through the indicators). These rows will serve to highlight the critical findings and recommendations in a concise manner. This information can be useful also for the executive summary, and for summaries to be shared and presented at the validation workshops.

Table 5 should be completed for each legally recognized tenure type identified in Table 4. Responses should reflect tenure rights and tenure security of the non-state beneficiary of the tenure type, and in view of the ongoing large-scale investments, as well as redistribution and readjustments in tenure. Thus, if a forest co-management system is being reviewed, the rights assessed should be those of the non-state beneficiaries rather than rights of the State given that the latter is the provider of the rights in statutory systems.

Table 5, Cells 1A through 1E correspond to the cells in Box 5, Row 1. This section focuses on the policy and legal framework providing for the recognition of rights, protection of rights, enjoyment of rights, access to justice and prevention of disputes and conflicts. The section should identify the policy and legal framework for forest land and resources, including the right to harvest/benefit from timber and various non-wood forest resources such as fuelwood, fodder (including access to pasture), edible plants and fruits, medicinal plants, water, fish, wildlife, carbon (see "legitimate tenure rights" under Section IV, and Table 2). This section will require a review of (or expert input on) sectoral laws, as well as other relevant laws such as land law, international human rights laws that the State is signatory to, civil code, etc.

TABLE 5
The assessment tool for legally recognized forest tenure systems (Cells 1A-1E: The policy and legal framework)

Cell 1A: Recognition of rights in the policy/ legal framework	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Recognition of forest rights. When States formally recognize or allocate tenure rights, the legal framework requires the identification of all existing and legitimate tenure rights and right holders, whether recorded or not. The legal framework requires consultation with all who might be affected, including holders of individual and communal rights, men and women, small-scale producers, indigenous peoples and other groups with customary rights (8.8, 7.3, 4.4, 7.4, 5.3, 9.4). *Response to this indicator should include information on the various types of rights listed in Table 4, Rows 1–6).*					
Laws promote social equity and gender equality in rights recognition/allocation. Where the State formally recognizes or allocates tenure rights, the policies clearly specify the means of allocating rights, such as allocation based on equity. The policy/ legal framework prohibits discrimination related to tenure rights, including those resulting from lack of legal capacity (e.g. availability of laws in important local languages) and lack of access to economic resources. The policy/legal framework ensures equal tenure rights for women and men, including in inheritance laws. Likewise, civil laws promote equality with regards to transfer of marital property, even in cases of unregistered/ traditional marriages, separation, divorce, abandonment, widowhood and polygamy (7.4, 4.6).					

Cell 1A: Recognition of rights in the policy/ legal framework (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Overall assessment of legal recognition of rights in the policy/ legal framework (Cell 1A)					

Cell 1B: Protection of rights in the policy/ legal framework	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Protection of all legitimate forest resource rights. The policy/ legal framework protects all legitimate tenure rights over forest resources, including those on forest land owned or controlled by the State, and ensures that these rights are not extinguished or infringed. Such rights include customary and collective rights to use and manage forests and associated resources, as well as subsidiary and transboundary tenure rights. Where the use and control of forests is retained by the public sector, the State develops policies to promote equitable distribution of benefits from these forests (8.2, 4.5, 7.1, 8.6, 11.8, 12.6, 22.2, 22.3).					
Due process for reduction/elimination of forest land rights. The policy/legal framework states that rights may be eliminated/ expropriated only when they are required for a public purpose, which is clearly defined in the law. The policy/legal framework requires consultation and public disclosure of information prior to any elimination of rights (16.1, 16.2).					

Cell 1B: Protection of rights in the policy/ legal framework (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Fair compensation. Where expropriation of rights is considered, the law requires consideration of alternatives prior to any land taking (or extinguishing any rights), and fair and prompt compensation for all expropriated rights (16.3).					
Protection of rights within customary systems. When developing policies and laws related to tenure systems of indigenous and other communities with customary tenure systems, all members or representatives of affected communities are consulted, including vulnerable and marginalized members. Policies include provisions to support equitable access to and/or control of forests and forest resources of all members of the community including women (e.g. management rights, where appropriate, inheritance/ transfer rights including in cases of divorce, separation, abandonment, widowhood, or in situations of polygamy) (9.7, 9.2).					
Overall assessment of protection of rights in the policy/legal framework (Cell 1B)					

Cell 1C: Provisions for the enjoyment of rights in the policy/legal framework	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Removal of barriers. The legal framework seeks to facilitate enjoyment of rights by revising/removing contradictory laws, and removing unnecessary restrictions preventing right holders from enjoying their rights (6.5). *Response to this indicator should take into consideration the various types of rights listed in Table 4 Rows 1–6, and should conform with information provided in Table 4, Rows 8–10.*					
Support to smallholders and the poor in markets. The sectoral agency has established policies, laws and regulatory systems making them equitable and preventing uncompetitive practices (e.g. compatible forest, timber, NWFP rights; simplifying administrative procedures that are accessible to all; making transparent and publicizing market information; removing inequities in relation to taxation, participation in forest product markets, etc. that may pose a barrier for smallholders). The State promotes production and investment models that encourage partnerships with local tenure right holders in place of large-scale transfer of tenure rights to investors (11.3, 12.2).					
Overall assessment of enjoyment of rights as provided in the policy/legal framework (Cell 1C)					

Cell 1D: Access to justice as provided in the policy/legal framework	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Right to appeal/accountability. The relevant sectoral law provides right holders the legal right to appeal and to challenge administrative decisions (21.1).					
Equal access to justice. Relevant sectoral laws provide for equal access to judicial bodies and other legally recognized mechanisms for resolving disputes over tenure rights. The law provides for legal assistance to the poor and vulnerable persons. These measures may include affordable legal aid, provision of services of paralegals or parasurveyors, or mobile services for remote communities and mobile indigenous peoples (21.1, 21.6, 6.6).					
Alternative dispute resolution (ADR). The relevant sectoral law provides for (or links to existing) mechanisms for alternative forms of dispute resolution (e.g. mediation, arbitration), especially at the local level, for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights. In the case of legally recognized customary tenure, the legal framework supports customary approaches used by indigenous peoples and other communities with customary tenure systems to resolve tenure conflicts within communities. The legal framework seeks to strengthen women's and marginalized groups' access to ADR and customary institutions of dispute resolution (e.g. by requiring representation of these groups in these systems as mediators). The ADR systems are effective, enforceable, and are appropriately recognized by formal dispute resolution systems (21.1, 21.2, 21.3, 9.11, 25.3).					

Cell 1D: Access to justice as provided in the policy/legal framework (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Overall assessment of access to justice in the policy/legal framework (Cell 1D)					

Cell 1E: Provisions for prevention of disputes/conflicts as provided in the policy/legal framework	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Law promotes procedural rights and public participation in policy processes. The relevant sectoral law requires that the State hold meaningful consultations with all legitimate right holders in the formulation of forest policy/law and implementation, and particularly those encouraging responsible investment. The sectoral law policy/legal framework includes provisions for States to hold good faith consultation with communities before initiating any project or adopting and implementing laws or measures that affect legitimate right holders (4.10, 5.5, 9.7, 9.9, 12.8).					
Transparency requirements. The sectoral policy/legal framework requires that decisions regarding right allocations are done transparently. It defines clear criteria and competitive process for allocating forest land and resource rights (12.3, 11.3).					

Cell 1E: Provisions for prevention of disputes/conflicts as provided in the policy/legal framework (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Non-discrimination. The sectoral law attempts to eliminate discrimination and other factors that can be a cause of conflicts related to tenure (e.g. with regards to existing legitimate tenure, allocation of rights, etc.) (25.3).					
Prevention of corruption. The sectoral law provides for clear mechanisms to prevent corruption in forest administration and in dispute resolution systems and processes by applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations (21.5, 10.5, 6.9). In particular, the law makes clear provisions for accountability of individuals, public agencies and non-state actors according to the principles of the rule of law (see Implementing principles, Box 4).					
Overall assessment of prevention of disputes/conflicts as provided in the policy/legal framework (Cell 1E)					

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Table 5, Cells 2A-2E correspond to the cells in Box 5, Row 2. This section focuses on the institutional arrangements provided by the State for the implementation of the tenure systems and associated policy/legal provisions provided for in Row 1. This section is also intended to capture the success or failure with regards to the implementation of the policy/legal provisions. While much of this section focuses on State institutions, both in the forestry sector and others (e.g. Ministry or Department of Forestry and its decentralized offices, dispute resolution or legal aid offices), specific questions pertain to customary institutions where they have legal recognition for forest governance.

TABLE 5
The assessment tool for legally recognized forest tenure systems (Cells 2A-2E: Institutions)

Cell 2A: Institutional set-up and the recognition of rights	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Institutions are designated at the appropriate levels. The State places responsibilities at levels of government that can most effectively deliver services to the people. The State provides for appropriate human, physical and financial resources; training; and other support to help fulfil responsibilities (5.6, 8.10).					
Clear roles and responsibilities. The State has clearly defined the roles and responsibilities of agencies dealing with tenure of forests. The State ensures coordination between implementing agencies, as well as with local governments, indigenous peoples and other communities with customary tenure systems (5.6).					
Equitable access. The State and other parties provide additional measures to support vulnerable or marginalized groups who cannot otherwise access administrative services for the recognition of rights. These measures should include legal support, parasurveyors and mobile services for remote communities and mobile indigenous peoples in local languages. Likewise, the State facilitates access of women to administrative services (e.g. obtaining rights to forest lands during the recognition/ allocation process) (6.6).					
Overall assessment of recognition of rights as provided for in the institutional arrangements (Cell 2A)					

Cell 2B: Institutions and protection of rights	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Rule of law. The State meets its relevant obligations and voluntary commitments to protect, promote and implement human rights for all legitimate right holders. The State respects and protects the civil and political rights of defenders of human rights, including the human rights of indigenous peoples and other forest dwellers, and when dealing with individuals and associations acting in defence of forests (9.3, 4.8).					
Adequate protection of rights. As per the law, the State makes all efforts to protect legitimate tenure rights from being eliminated or changed unilaterally and unfairly. The State avoids forced evictions in cases of unrecognized legitimate tenure not recognized by law. It protects rights of women and the vulnerable who hold subsidiary rights, against unauthorized use of lands of indigenous and other customary institutions (8.2, 9.8, 10.6, 7.1).					
Responsible elimination of rights. The State expropriates rights to forests and forest resources only when these are required for public purposes as defined in the law. The State ensures public disclosure on proposed and final decisions on expropriations or concession allocations. The State considers alternatives prior to any land taking or extinguishing any rights. The State provides fair and prompt compensation for expropriated rights (16.1, 16.2, 7.1, 16.3).					
Protection of rights within customary systems. State institutions have introduced mechanisms to ensure that indigenous and other customary tenure systems practice principles of equity in resource allocation and governance for all community members including women (e.g. participation in decision-making on how forests are used or what is planted, protection of rights in case of divorce, separation, abandonment, or if widowed). Mechanisms and provisions are introduced to prevent corruption and elite capture in relation to tenure systems of communities with customary tenure systems (9.2, 9.6, 9.7, 9.12).					

Cell 2B: Institutions and protection of rights (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Overall assessment of protection of rights as provided for in the institutional set-up (Cell 2B)					

Cell 2C: Institutions and enjoyment of rights	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Awareness of rights and responsibilities. The State seeks to ensure that right holders have full knowledge of their rights and responsibilities by providing explanatory materials in applicable languages (7.5, 6.4).					
Removal of barriers. The State attempts to remove unnecessary procedural requirements that prevent right holders from enjoyment of rights (6.3).					
Provision of support. The State makes efforts to facilitate right holders to benefit from their rights (e.g. technical assistance, seedlings and tree planting subsidies, access to credit, access to markets, information on forest produce markets, insurance or other support/extension services). The State makes efforts to deliver services to all, including those in remote locations (7.5).					

Cell 2C: Institutions and enjoyment of rights (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Equity and gender equality. The State supports equitability with emphasis on smallholders and vulnerable populations with fewer means to access services. It facilitates women to enter into contracts concerning tenure rights on the basis of equality with men. Women participate in forest product (wood or NWFP) buying and marketing cooperatives where these exist. Women and vulnerable groups have access to credit, loans and other services as do others (5.4).					
Overall assessment of institutional support for the enjoyment of rights (Cell 2C)					

Cell 2D: Institutions and access to justice	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Equitable access to formal dispute resolution systems. State institutions ensure that any person whose human rights are violated in the context of tenure has access to means of formal dispute resolution and remedies. Dispute resolution services are provided in locations that are accessible for the majority of citizens, provided in relevant local languages, and are affordable for the majority of citizens. The State and other parties provide additional measures to support vulnerable or marginalized groups such as affordable legal aid, provision of services of paralegals and mobile services for remote communities and mobile indigenous peoples in local languages. Likewise, the State facilitates women's access to formal courts (4.9, 21.6, 6.6, 21.1).					
Alternative dispute resolution. The State makes efforts to strengthen and develop alternative forms of dispute resolution, especially at the local level, for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights, including any customary approaches used by indigenous peoples and other communities with customary tenure systems. The State seeks to strengthen women's and marginalized groups' access to ADR and customary institutions of dispute resolution (e.g. by requiring representation of women and the marginalized in these systems as mediators, etc.) (21.2, 21.3, 9.11, 25.3).					
Overall assessment of access to justice provided for in the institutional set-up (Cell 2D)					

Cell 2E: Institutions and prevention of disputes/conflicts	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Public participation in legal/policy reform, decision-making and spatial planning. The sectoral agency defines and publicizes opportunities for civil society, the private sector and academia to contribute to the formulation and implementation of policy/law and on decisions regarding spatial planning. The State holds good faith consultation with communities before initiating any project or adopting and implementing laws or measures that affect communities and legitimate right holders including women and marginalized groups (5.7, 9.7, 9.9, 20.2, 20.4).					
Transparency in rights allocations. Responsible institutions maintain transparency in decisions regarding transfer and allocation of forest and forest resource rights. The State makes efforts to ensure that women and marginalized groups receive relevant information in local languages (12.3).					
Non-discrimination in provision of services. The State provides prompt, accessible and non-discriminatory services in the recognition/allocation and protection of rights and in providing additional services (6.3).					
Anti-corruption in forest management and dispute resolution. The State enforces anti-corruption measures in forest management and dispute resolution processes, regardless of whether they are provided in the law. These may include applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations. Public agencies and non-state actors are subject to disciplinary action in case of violations of the law. They are protected against interference in duties and from retaliation for reporting acts of corruption (6.9, 6.8, 10.5, 21.5).					

Cell 2E: Institutions and prevention of disputes/conflicts (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Monitoring and improvement. Relevant sectoral agencies and judicial authorities seek to monitor performance of the tenure system and impacts. They publish performance standards, report regularly on results and introduce corrective measures. Users have means of addressing complaints either within the implementing agency, such as by administrative review, or externally, such as by an independent review or through an ombudsman. Staff receive continuous training and are recruited with due regard to ensuring gender and social equity (6.7, 6.1).					
Overall assessment of prevention of disputes/conflicts as provided for in the institutional set-up (Cell 2E)					

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Table 5, Cells 3A-3E correspond to the cells in Box 5, Row 3. This section of table focuses on the State systems for the administration of tenure. This section also focuses on systems for recording of tenure rights, valuation, taxation, regulated spatial planning and resolution of disputes over tenure. In principle, all tenure systems should be accompanied with appropriate and reliable recording systems that provide accessible information on tenure rights to increase tenure security and to reduce risks of transactions. The rights recording system should be robust, with a backup system to ensure data are protected in case of natural disaster or conflicts.

TABLE 5

The assessment tool for legally recognized forest tenure systems

(Cells 3A-3E: The administration of tenure)

Cell 3A: Administrative system and recognition of rights	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
System for recording rights. The State provides a system to record all legitimate tenure rights over forests (land/resource; use/management), including those held by the public sector, private sector, and those with customary tenure systems. It provides socio-culturally appropriate ways to record rights involving customary tenure systems (17.1, 17.2, 17.4).					
Systematic recognition. Where possible, rights recognition and allocation of tenure rights are done systematically, progressing area by area to provide the poor and vulnerable with full opportunities to acquire legal recognition of their tenure rights (7.4).					
Identification of existing rights. Prior to allocation of tenure rights to forest land and forest resources, all existing tenure claims and right holders are systematically and impartially identified and documented at the outset through consultations and participation of affected legitimate primary and secondary right holders (25.4).					

Cell 3A: Administrative system and recognition of rights (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Equity in recognition of rights. Implementing agencies strive to ensure that all are able to record their tenure rights and obtain information without discrimination. They facilitate accessibility of women and vulnerable groups by establishing service centres or mobile offices, and using locally based professionals such as lawyers, notaries, surveyors, social scientists and others, and by providing services in local languages (17.3).					
Overall assessment of recognition of rights as provided in the administrative system (Cell 3A)					

Cell 3B: Administrative system and protection of rights	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Centralized and integrated system. Where tenure rights of indigenous peoples and other communities with customary tenure systems are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims. Where it is not possible to record tenure rights of indigenous peoples and other communities with customary tenure systems, or occupations in informal settlements, the State takes particular care to prevent the registration of competing rights. It establishes safeguards to protect the legitimate tenure rights of spouses, family members and others who are not shown as holders of tenure rights in recording systems, such as land registries (9.8, 11.6, 17.2).					

Cell 3B: Administrative system and protection of rights (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Protection of property records in case of natural disaster or conflict. The State makes a concerted effort to protect official records of tenure rights against destruction and theft (25.4).					
Proper valuation. The State has developed and publicized national standards for the valuation of forests and forest resources. Valuation systems take non-market values – such as social, cultural, religious, spiritual and environmental values – into account, where applicable. The process for valuing tenure rights is transparent; information is recorded, analysed and made accessible to provide a basis for accurate and reliable assessment of values (18.4, 18.2, 18.3, 18.5).					
Overall assessment of protection of rights as provided in the administrative system (Cell 3B)					

Cell 3C: Administration of tenure and enjoyment of rights	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Availability of records. Right holders receive proof of record, including spatial information, when allocated tenure rights (17.1).					

Cell 3C: Administration of tenure and enjoyment of rights (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Barriers to enjoyment of rights. The process of recording rights is simple and devoid of complexities that prevent rights recognition (e.g. need for high-level approvals, requirement of complex management plans, high fees, requirement of highly accurate spatial data) (17.4).					
Support to enjoyment of rights. The sectoral agency facilitates enjoyment of rights, including recording (e.g. implementing agencies such as land registries have established service centres or mobile offices, having regard to accessibility by women, the poor and vulnerable groups; ensure access to government maps and cadaster information; facilitate first-time registration; record transfer of rights; update change of information/ records; provide specialized services in high-need areas (e.g. conflict areas) (17.3).					
Overall assessment of enjoyment of rights as provided for in the administrative system (Cell 3C)					

Cell 3D: Administration of tenure and access to justice	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Right to appeal on forest tenure administration. The sectoral agency provides right holders with the right to appeal in case of improper recording, provision of records, valuation, taxation, etc. (19.3).					
Mechanism for resolving disputes over tenure rights. The sectoral agency provides prompt and effective measures to resolve disputes related to tenure rights administration, including mechanisms for restitution, indemnity, compensation and reparation (4.9, 21.1).					
Equitable access to sectoral dispute resolution system. The sectoral agency seeks to ensure that any person whose human rights are violated in the context of tenure has access to means of formal dispute resolution and remedies. Dispute resolution services are affordable, provided in local languages and in locations accessible for the majority of citizens. The sectoral agency provides additional measures to support women and marginalized groups, such as affordable legal aid, provision of services of paralegals or parasurveyors, and mobile services for remote communities and mobile indigenous peoples in local languages (4.9, 21.6, 6.6).					
Overall assessment of access to justice as provided for in the administrative system (Cell 3D)					

Cell 3E: Administration of rights and prevention of disputes/ conflicts	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Participatory tenure administration. In order to provide socio-culturally appropriate ways of recording rights of indigenous and other communities with customary tenure systems, and of women and marginalized groups within these systems, the rights recording process is inclusive and participatory (17.2).					
Transparency in tenure administration. The sectoral agency maintains transparency by ensuring that information on tenure rights is easily available to all, subject to privacy restrictions. Such restrictions should not unnecessarily prevent public scrutiny to identify corrupt and illegal transactions. The sectoral agency links information on rights, the holders of those rights and the spatial units related to those rights. Records are indexed by spatial units as well as by holders to allow competing or overlapping rights to be identified. Information is made available in easily accessible places (public/community spaces) and in local languages (17.4, 17.5).					
Non-discrimination in rights recording. The sectoral agency strives to ensure that all are able to record their tenure rights and obtain information without discrimination. The State makes efforts to ensure that women and marginalized groups are provided clear information regarding documentation of their rights (17.3).					
Prevention of corruption in tenure administration. The sectoral agency endeavours to prevent corruption in the allocation or recording of tenure rights by widely publicizing processes, requirements, fees and any exemptions, and deadlines for responses to service requests. The State endeavours to prevent corruption in tax administration through increased transparency in the use of objectively assessed values (6.9, 17.5, 19.3).					

Cell 3E: Administration of rights and prevention of disputes/ conflicts (continued)	Alignment with VGGT (rating 0–5), for tenure type			Justification	Recommendations for improvement
	1	2	3		
Overall assessment of prevention of disputes/conflicts as provided for in the tenure administrative system (Cell 3E)					

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6 Summary tables for each tenure type

This section allows for a synthesis of the full assessment completed.

6.1 SOCIALLY LEGITIMATE TENURE SYSTEMS

Table 6 summarizes the status of socially legitimate tenure not legally recognized. This table should be completed once for all such tenure systems.

TABLE 6
Summary for socially legitimate forest tenure systems

Average rating	
Key strengths	1.
	2.
	3.
Key concerns	1.
	2.
	3.
Key recommendations	1.
	2.
	3.

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6.2 LEGALLY LEGITIMATE TENURE SYSTEMS

Table 7 is provided for summary rating of legally legitimate tenure systems recognized in formal law. This table should be completed separately for each legally recognized forest tenure system assessed, providing an overall rating (level of alignment with the VGGT) for each cell. The column on "Overall alignment (1–3)" allows reviewers to summarize rating for each theme (across rows). The row on "Overall alignment (A–E)" allows reviewers to summarize rating for each VGGT general principle (across columns). This assumes an equal weighting for each column and row respectively; however, it serves to simplify the process of assigning an overall rating. While this method of scoring may be less than ideal, the scoring will serve as a quick reference guide to identify critical areas for improvement (the lower the alignment, the higher the need for improvement). The same applies for "Overall rating for legally legitimate tenure type". These overall figures will be useful to guide discussion and draw upon lessons from good practices from other country contexts.

TABLE 7
Summary ratings for legally legitimate forest tenure systems
(To be completed separately for each tenure type)

Tenure type:						
	Recognition of rights (A)	**Protection of rights (B)**	**Provisions for enjoyment of rights (C)**	**Access to justice (D)**	**Prevention of disputes/ conflicts (E)**	**Overall alignment (1–3)**
1. The policy/legal framework						
2. Institutions						
3. Administration of tenure						
Overall alignment (A–E)						**Overall rating for legally recognized tenure type =**

Table 8 allows users to compile numeric information on the various legally legitimate or recognized tenure systems assessed into one consolidated table (adding rows as needed). As indicated in the Table, column 1 will provide the name of the tenure type, and column 2 will provide the rating for overall alignment with the VGGT from Table 7. The lower the rating for the tenure type, the greater the need for improvement in governance of that tenure type.

TABLE 8
Aggregate table for all legally recognized forest tenure systems

Type of tenure regime	**Overall alignment with the VGGT (from Table 7)**
1.	
2.	
3.	

During the validation workshop, participants can be asked to validate and prioritize recommended improvements according to urgency of need, or ease of addressing the need, or both. Table 9 will allow reviewers to summarize recommendations through discussion and dialogue.

TABLE 9
Summary recommendations for each legally legitimate forest tenure system
(Information to be taken from Table 5, rows on "Overall Assessment". To be completed separately for each tenure type.)

Legally legitimate forest tenure system Tenure type:	
Overall assessment summary	**Recommendations for improvement**
1. The policy and legal framework	
Cell 1A: Formal recognition of rights in the policy/legal framework	
Cell 1B: Protection of rights in the policy/legal framework	
Cell 1C: Provisions for the enjoyment of rights in the policy/legal framework	
Cell 1D: Access to justice as provided in the policy/legal framework	
Cell 1E: Provisions for prevention of disputes/conflicts as provided in the policy/legal framework	
2. Institutions	
Cell 2A: Institutional set-up and the recognition of rights	
Cell 2B: Institutions and protection of rights	
Cell 2C: Institutions and enjoyment of rights	
Cell 2D: Institutions and access to justice	
Cell 2E: Institutions and prevention of disputes/conflicts	

3. Administration of tenure	
Cell 3A: Administrative system and recognition of rights	
Cell 3B: Administrative system and protection of rights	
Cell 3C: Administration of tenure and enjoyment of rights	
Cell 3D: Administration of tenure and access to justice	
Cell 3E: Administration of rights and prevention of disputes/conflicts	

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Annex. Outline for forest tenure assessment

I. Purpose of the assessment

II. Methodology

III. Country context

- Forest area in country and type of forests
- Brief historical context, including change in forest cover over the 50-year period
- Major forest tenure reforms adopted in the past 50-year period
- Brief overview of current policy and legal framework
- Forest tenure and management systems in country, the current context (including area under each tenure system, governing institution, rights of citizens, etc.)

IV. Summary of the bundle of rights

Table summarizing bundle of rights associated with each of the legally legitimate tenure systems assessed

V. Numerical rating presenting the level of alignment with the VGGT

- Ratings for socially legitimate tenure system and supporting explanation
- Ratings for each legally legitimate forest tenure system assessed and supporting explanation

VI. A summary of analysis for socially legitimate tenure systems

- This section should highlight key issues and recommendations for socially legitimate forest tenure systems in country
- Note major differences (if any) in issues and recommendations among these tenure systems

VII. A summary of analysis for each legally legitimate forest tenure system

- This section should highlight key issues and recommendations for each legally legitimate forest tenure system assessed
- Note differences in issues and recommendations among these tenure systems

VIII. References

Notes

Notes

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